

90-5 47

Supreme Court, U.S.  
FILED

AUG 3 1990

JOSEPH E. SPANIOLO, JR.  
CLERK

Case No. \_\_\_\_\_

---

---

IN THE  
**Supreme Court of the United States**

---

---

OCTOBER TERM 1990

---

---

KENNETH B. QUANSAH, JR.,  
Petitioner,

v.

CITY OF NEW YORK, et al.,  
Respondents

---

On Writ of Certiorari to the United States Court of  
Appeals for the Second Circuit

---

---

PETITION FOR A WRIT OF CERTIORARI

---

KENNETH B. QUANSAH, JR.  
Petitioner, pro se  
P.O. Box 51759  
San Jose, CA 95151-5759  
Telephone (408) 578-4113



### **QUESTION PRESENTED**

1. Did the United States Court of Appeals for the Second Circuit properly dismiss petitioner's de novo appeal on the grounds that his complaint was insufficient and failed to state a claim upon which relief can be granted but his Title 42, Section 1983 claims were invalid, unconstitutional, barred by a State Law (New York Gen. Mun. Law § 50-e) which requires notice of claim within ninety days after the cause of action arose?
2. Did the Second Circuit Court of Appeals properly dismiss petitioner's de novo appeal but it did not deprive him the Civil Rights under Title 42, U.S.C. §§ 1981, 1983, 1985 and the Constitutional right under Fourth Amendment, Fourteenth Amendment?

## **TABLE OF CONTENTS**

	<b>Page</b>
1. Question Presented .....	1
2. Parties to the Proceeding .....	2
3. Opinion Below .....	2
4. Jurisdiction .....	2
5. Statute Involved .....	3
6. Statement of the Case .....	4
7. Statement of Reasons .....	6
8. Conclusion .....	11
9. Certificate of Service .....	12

## **APPENDICES**

1. Statute Involved .....	1a
2. Second Circuit Order Denying Petition for Rehearing .....	2a
3. Second Circuit Order .....	3a

## TABLE OF AUTHORITIES

1. 28 U.S.C. § 1251(3) .....	2
2. 28 U.S.C. § 1252 .....	2
3. 28 U.S.C. § 1254(1), 1254(2) .....	2
4. 28 U.S.C. § 1291 .....	2
5. 28 U.S.C. § 1292a(1) .....	2,5
6. 28 U.S.C. § 1332 .....	2,4
7. 28 U.S.C. § 1343(a) .....	2,4,5
8. 28 U.S.C. § 1391 .....	2
9. 28 U.S.C. § 1653 .....	3
10. 28 U.S.C. § 1654 .....	3,9
11. 28 U.S.C. § 2403(a) .....	3,5
12. 42 U.S.C. § 1981 .....	1,3,4,7,9,10
13. 42 U.S.C. § 1983 .....	1,3,4,5,6,7,10
14. 42 U.S.C. § 1985 .....	1,3,4,7,9
15. The Fourth Amendment .....	1,10
16. The Fourteenth Amendment .....	1,9,10
17. The New York Gen. Mun. Law § 50-e .....	1,3,5,6,10
18. <u>Anderson v. United States</u> , 417 US 211 41 L Ed 2d 20, 94 S Ct 2253 (1974) .....	9
19. <u>Angola v. Civiletti</u> , 666 F. 2d 1, 4 (2d Cir. 1981) .....	7
20. <u>Brown v. Byer</u> , 870 F. 2d 975 (5th Cir. 1989) .....	10
21. <u>Dunaway v. New York</u> , 442 US 200, 60 L Ed 2d 824, 99 S Ct 2248 (1979) .....	10
22. <u>Fiacco v. Rensselaer</u> , 783 F. 2d 319 (2nd Cir. 1986) .....	10
23. <u>Gilker v. Baker</u> , 576 F. 2d 245 (1978) .....	10

## TABLE OF AUTHORITIES

		Page
24.	<u>Griffin v. Breckenridge</u> , 403 US 88 29 L Ed 2d 338, 91 S Ct 1790 (1971).....	9
25.	<u>Haines v. Kerner</u> , 404 US 519, 520-521, 30 L Ed 2d 652, 92 S Ct 594 (1972) .....	7
26.	<u>Hall v. Ochs</u> , 817 F. 2d 920 (1st Cir. 1987) .....	10
27.	<u>Heidelberg v. Hammer</u> , 577 F. 2d 429 (7th Cir. 1978) .....	7
28.	<u>Kush v. Rutledge</u> , 460 US 719, 75 L Ed 2d 413, 103 S Ct 1483 (1983) .....	9
29.	<u>McKenzie v. Lamb</u> , 738 F. 2d 1005 (1984) .....	10
30.	<u>McKinley v. City of Kloy</u> , 705 F. 2d 1110 (1983).....	7
31.	<u>Melear v. Spears</u> , 862 F. 2d \ 1177 (5th Cir. 1989).....	10
32.	<u>Mitchum v. Purvis</u> , 650 F. 2d 647 (5th Cir. 1981).....	7
33.	<u>Monell v. New York City Dept. of Social Services</u> , 436 US 658, 56 L Ed 2d 611, 98 S Ct 2018 at 2037-38 (1978) .....	10
34.	<u>Rudolph v. Locke</u> , 594 F. 2d 1076 (5th Cir. 1979).....	7
35.	<u>Salahuddin v. Cuomo</u> , 861 F. 2d 40, 43 (2d Cir. 1988) .....	10
36.	<u>Williams v. Codd</u> , 459 F. Supp. 804 (1978) .....	9

## **PARTIES TO THE PROCEEDING**

KENNETH B. QUANSAH, JR.,

Petitioner,

v.

CITY OF NEW YORK and PEOPLE OF COUNTY OF  
NEW YORK, POLICE DEPARTMENT, CITY OF  
NEW YORK and COUNTY OF NEW YORK,

Respondents.

## **OPINION BELOW**

Petitioner filed a complaint in U.S. District court for the Southern District of New York against above respondents and the District court dismissed the complaint. Petitioner subsequently, filed de novo appeal in the District court and U.S. Court of Appeals for the Second Circuit filed an order on March 6, 1990 to dismiss the appeal. A copy is attached hereto as Appendix 3. The petition for rehearing was denied in an order dated May 7, 1990. A copy is attached hereto as Appendix 2.

## **JURISDICTION**

The jurisdiction of this court is invoked 28 U.S.C. §§§§ 1251(3), 1252, 1254(1), 1254(2). The Second Circuit Court of Appeals dismissed petitioner's appeal invalidated Act of Congress on grounds of a State Law in an order dated March 6, 1990. Petitioner consequently, invoked 28 U.S.C. §§ 1291, 1292(a)(1) in the Appeals court for the Second Circuit for want of jurisdiction. Petitioner invoked 28 U.S.C. §§§ 1332, 1343(a), 1391 to confer jurisdiction to the District court. Petitioner's notice of Appeal for review in Supreme Court of the United States was filed on April 3, 1990 but was returned to him as abolished. Quansah is a resident of San Jose, California.

### **STATUTE INVOLVED**

The statutes involved in Quansah v. City of New York et al. are Title 42 U.S.C. §§§ 1981, 1983, 1985. Other statutes involved are Title 28 U.S.C. §§ 1653, 1654. Title 28 U.S.C. § 2403(a) might apply due to the circumstances of this case. A statute also involved is a State Law (New York Gen. Mun. Law § 50-e).

Portion of these statutes are provided in relevant parts and attached hereto as Appendix 1.



## STATEMENT OF THE CASE

Quansah was the plaintiff/appellant, pro-se in previous Lawsuit Quansah v. Baruch College et al and City Law Corporation attorneys represented Baruch College, et al, agencies of City of New York. Quansah claims, defendants/appellees Baruch College et al motioned to expedite the appeal when it was time for them to file brief. Quansah claims after he filed his response motion defendants/apellees motion was denied. Baruch College et al herein, refused to file their brief in the Second Circuit and refused any correspondence.

Quansah subsequently went to City Law Corporation offices in New York City on December 3, 1987 to settle this case after notices and visits. Quansah claims while waiting in the City Law Corporation reception upon the corporation counsel's request and permission, New York City police rushed in the reception in a swarm. Quansah contends the police officers refused in their numbers to identify themselves and in a concert arrested him. Quansah therein was detained/imprisoned for four days in many cells in different boroughs, inconvenient for anyone to bail him before his arraignment and release. Quansah, as a result, suffered humiliation, mental depression, mental as well as emotional distress, fears to disregard, weight loss and monetary harms.

Quansah thereafter, filed a lawsuit in the U.S. District court with fears that such arrest will recur as a pro-se litigant. Quansah therein claimed violation of his rights under Title 42, U.S.C. §§§ 1981, 1983, 1985 and asserted Constitutional deprivation under Fourth Amendment as well as Fourteenth Amendment.

Quansah invoked 28 U.S.C. §§ 1332, 1343(a) in his original complaint to confer jurisdiction to the District court. The District court dismissed the complaint on June 26, 1989 at the instant of respondents motion to dismiss for failure to state a claim upon which relief can be granted and also to claim that Quansah's Section 1983 claims are barred by State

Law (New York Gen. Mun. Law § 50-e) without prejudice to refileing a complaint on or before July 31, 1989. Quansah claims the District court judge spontaneously issued a final judgment on July 6, 1989 to dismiss the entire case. Quansah claims, he replied respondents motion therein agreed to amend any specific claim which was ambiguous to understand and seeked for a trial but the district court did not give this case a chance herein, hurried its dismissal. Quansah claims, the District court judgment is in conflict with the District court order therefore the District court erred in disposing of the complaint and this is a reversible error.

Quansah as a result filed an appeal de novo in the District court and invoked 28 U.S.C. § 1292a(i) for the subject matter jurisdiction. Quansah further invoked 28 U.S.C. § 1343(a) on grounds of jurisdiction. The Appeals Court for the Second Circuit dismissed the appeal Sua Sponte of the grounds that his complaint was insufficient and his Section 1983 claims were barred, invalid and unconstitutional by a State Law (New York Gen. Mun. Law § 50-e) which requires notice of claim within ninety days after the cause of action arose. Quansah claims, a complaint in which the adverse parties did answer and claimed his Section 1983 claims were barred by State Law (New York Gen. Mun. Law § 50-e) stated a claim and need not to be amended therefore this is a reversible error.

Quansah filed a petition for rehearing in the Appeals Court for the Second Circuit and the petition was denied in an order filed May 7, 1990.

Quansah avers 28 U.S.C. § 2403 and claims the Constitutionality of an act of Congress affecting the public interest is drawn in question and the above citation might be applicable.

Quansah claims the Second Circuit Court of Appeals did not certify such facts to the Attorney General.

Quansah claims the Supreme Court of the United States is compelled to conduct a comprehensive examination into this matter for a just resolution.

Quansah seeks to appear in Supreme Court of the United States to argue all relevant issues he could not present.

### **STATEMENT OF REASONS**

Quansah claims, to imprison civilized people before arraignment or public trial is a burden and something of the past.

Quansah argues, the U.S. District court for the Southern district of New York and the Second Circuit Court of Appeals erred in dismissing his complaint and appeal for failure to state a claim upon which relief can be granted therein, invalidating acts of congress of the grounds that his Section 1983 claims were barred by a State Law (New York Gen. Mun. Law § 50-e).

Quansah argues, since respondents claim his Section 1983 claims were barred by a State Law, his complaint stated a claim upon which relief can be granted and therefore, the District court erred in dismissing his complaint. We must reason to resolve what are the claims of false arrest and false imprisonment in Section 1983 claim.

Quansah alleges the District court issued the order dismissing his complaint on June 26, 1989 with leave to refile the complaint on or before July 31, 1989, however, the District court again issued a judgment on July 6, 1989 to dismiss the entire complaint while the time to refile his complaint has not expired. Quansah alleges the leave to amend or refile his complaint did not expire; therefore, the District Court erred in dismissing the complaint and this is a reversible error, but the Second Circuit Court of Appeals did not give any ruling to this issue. Quansah alleges, this is in serious conflict with decisions of this court and decisions of other Court of Appeals.

Quansah argues, he alleged violation of his rights under Title 42, Sections 1981, 1983 and 1985 in the lower court. Quansah herein, argues, the mere averment of Title 42 and above sections demonstrate his complaint stated claims. Quansah alleges, failure to state a claim is not an issue to defeat his complaint.

Quansah alleges, paragraph five of the Second Circuit order asserted that "we agree with the District court's holding that the allegations in Quansah's complaint are insufficient" and therefore dismissed the case as insufficient. Quansah argues, this case was dismissed upon respondents motion to dismiss in the lower court for failure to state a claim herein, the District court did not explain its order and judgment but granted respondents motion to dismiss. Quansah herein alleges the Second Circuit erred in dismissing the appeal on the grounds that the complaint was insufficient and therefore this is a reversible error. Quansah argues, the Second Circuit Court of Appeals must not affirm any unfounded allegation.

Quansah argues, failure to state a claim nor the insufficiency of his complaint are obviously not the issue for the dismissal of this case. See Mitchum v. Purvis, 650 F. 2d 647 (5th Cir. 1981); Heidelberg v. Hammer, 577 F. 2d 429 (7th Cir. 1978); McKinley v. City of Eloy, 705 F. 2d 1110 (1983); Rudolph v. Locke, 594 F. 2d 1076 (5th Cir. 1979); Haines v. Kerner, 404 U.S. 519, 520-521, 30 L Ed 2d 652, 92 S. Ct 594 (1972). Quansah alleges, at this juncture, it was impossible for him to find an attorney to refile his complaint within ten days after the dismissal of his complaint in the District court. Quansah argues, the courts below hurried him into conclusions, therefore, this is a reversible error. Also see "Angola v. Civiletti, 666 F. 2d 1, 4 (2d Cir. 1981)" recited by Second Circuit in its order obviously making the Second Circuit order to this entitled case a reversible error.

Quansah argues, the Second Circuit Court of Appeals denied City Law Corporation's motion to dismiss a previous case in which City Law Corporation Attorneys represented a

number of City of New York agencies as the defendants/appellees. Quansah alleges he was the plaintiff/appellant, pro-se in that previous case. Quansah argues, City Law Corporation refused to file defendant's/Appellees' brief after the denial of their motion. Quansah alleges he wrote letters to Second Circuit and City Law Corporation about settlement but neither responded to his letters. Quansah visited the corporation counsels but never met them to discuss any settlement. Quansah argues he is a black African who was invidiously discriminated against as a member of Bronx Community College, August 1975 class and Bernard M. Baruch College, Fall 1977, Certified Public Accountants (C.P.A.) class. The above Colleges intentionally refused him graduation for no cause of action. Quansah alleges, after a prior settlement letters he went to City Law Corporation offices to meet the Corporation Counsel, Mr. Peter Zimroth. Quansah argues, while waiting in the reception upon the request and permission of Mr. Zimroth, the Chief Clerk at City Law Corporation conspired with some employees herein, a swarm of police officers rushed on him and false arrested him in a concert. Quansah alleges there were so many police officers he can not identify. However, there is one police officer he could identify and that was the police officer who filed charges against him in the Criminal Court. This police officer did not take part in his arrest but was at the vicinity of the City Law Corporation offices. Quansah alleges after the arrest he was searched, frisked and taken to many cells in different boroughs for four days. Quansah argues, such false arrest and false detention/imprisonment without a warrant is in violation to his protection under the above statutes. Quansah argues, he was pro-se litigant and he was very well protected by the Statutes of Congress. The Second Circuit herein claims in its order that the attorneys for respondents alleged that the previous case was dismissed hence Quansah had no right to be in their offices. However, there was no legitimate order on the record of the appeal which proves that case was dismissed. Apparently, there was an order on the record of the Appeal which proves the previous case was denied. Quansah vexes herein, demands a careful study into



the disposal of that previous case and his Section 1985 claims. Quansah alleges, the police officer who filed the charges against him did not take part in his arrest herein, he did not identify him as required by the Statutes of Congress to identify conspirators. Quansah however, identified the Police Department hence, there were too many police officers and they refused to identify themselves. Quansah alleges, he also cited the Criminal Court docket number in his original complaint to identify those police officers. Quansah argues the actions, edicts as well as the conduct of the police officers' must be considered official policy and under color of State Laws.

Quansah argues, as a result of the above, his Civil Rights were violated under Title 42, U.S.C. §§ 1981, 1985 and his Constitutional rights deprived under Fourteenth Amendment for equal protection of the laws. See Anderson v. United States, 417 U.S. 211, 41 L Ed 2d 20, 94 S Ct 2253 (1974); Kush v. Rutledge, 460 U.S. 719, 75 L Ed 2d 413, 103 S Ct 1483 (1983); Griffin v. Breckenridge, 403 U.S. 88 29 L Ed 2d 338, 91 S Ct. 1790 (1971); Williams v. Codd, 459 F. Supp. 804 (1978).

Quansah argues, a swarm of police officers rushed on him and false arrested him. The police officers in their great numbers refused to identify themselves. Quansah alleges this is the Law Corporation which handles or represents all police cases therefore the officers came in great numbers. Quansah argues he was a pro-se litigant very well protected under Section 1985 of Title 42 and Title 28, Section 1654. However, he was arrested without a probable cause. Quansah argues, trespass 3rd degree under New York (PL 140.10) was not an issue due to his well informed appearance in a Public Law Corporation Office. Quansah alleges, he was searched and frisked so many times hence, he was transported to many cells in different boroughs inconvenient for any relative to bail him. Quansah argues he stayed in this condition for four days before his arraignment. Quansah contends the delay in his arraignment must be decided by a jury. Quansah alleges, the roughing of handcuffs must be determined by

the jury. Quansah argues the ultimate issues in this entitled case are for the jury and the jury must determine the illegal false arrest and false detention/imprisonment for four days in which it was practically inconvenient for any relative to bail him. Quansah alleges, since the jury is the triers of fact, this is a reversible error. The District court and the Second Circuit stated in their orders that Quansah's Section 1983 claims were barred by State Law (New York Gen. Mun. Law § 50-e) therefore, invalidating Acts of Congress. Quansah alleges, no notice of right to sue is required in prosecuting Section 1983. Quansah argues, as a result of the above, his Civil Rights were violated under Title 42, U.S.C. §§ 1981, 1983 and his Constitutional rights deprived under the Fourth Amendment for unreasonable searches and seizures; Fourteenth Amendment under the equal protection of the laws, liberty and the due process of law.

Quansah argues, he physically suffered humiliation, mental depression, mental as well as emotional distress, weight loss, monetary harms and fears to disregard. Quansah alleges, liability must rest on respondents. See Dunaway v. New York, 442 U.S. 200, 60 L Ed 2d 824, 99 S Ct 2248 (1979); Fiacco v. Rensselaer, 783 F. 2d 319 (2nd Cir. 1986); Gilker v. Baker, 576 F. 2d 245 (1978); Brown v. Byer, 870 F. 2d 975 (5th Cir. 1989); Hall v. Ochs, 817 F. 2d 920 (1st Cir. 1987); McKenzie v. Lamb, 738 F. 2d 1005 (1984); Melear v. Spears, 862 F. 2d 1177 (5th Cir. 1989)

Quansah argues it will be notably worthy if this court could re-examine the date on which the District court gave its order and judgment in contrast to Second Circuit's citation in its order on the issue of expiration of due dates in this entitled case. See "Salahuddin v. Cuomo, 861 F. 2d 40, 43 (2d Cir. 1988)". Again see Monell v. New York City Dept. of Social Services, 436 U.S. 658, 56 L Ed 2d 611, 98 S Ct 2018 at 2037-38 (1978) for the determination of liability.

### **Conclusion**

Quansah seeks to recovery from such unreasonable burden from above case. Quansah claims the above case must be reversed. Quansah further demands that pro-se litigants must be well protected. Quansah claims no attorney wanted to take up his case but he has the right to redress.

**DATED: San Jose, California  
June 18, 1990**

**Respectfully Submitted,**

**/S/ KENNETH B. QUANSAH, JR.**

**KENNETH B. QUANSAH, JR.  
Petitioner, pro-se  
P.O. Box 51759  
San Jose, CA 95151-5759  
Telephone (408) 578-4113**



### **CERTIFICATE OF SERVICE**

On August 1, 1990 I served the attached document entitled Petition For a Writ of Certiorari by mailing two copies certified, first class, postage prepaid, return receipt requested to respondents counsels in above case and Solicitor General by attached addresses.

/S/ KENNETH B. QUANSAH, JR.

**KENNETH B. QUANSAH, JR.**

Petitioner, pro-se

P.O. Box 51759

San Jose, CA 95151-5759

Telephone (408) 578-4113

### **PARTIES ADDRESSES**

Peter L. Zimroth, Esq., Corporation Counsel

Ellen B. Fishman, Esq., (of Counsel)

City Law Corporation

100 Church Street

New York, NY 10007

Attorneys for City of New York et al.

Solicitor General

Department of Justice

Washington, D.C. 20530

## **APPENDICES**

### **STATUTE INVOLVED**

42 U.S.C. § 1981 provides in relevant part:

"All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other".

42 U.S.C. § 1983 provides in relevant part:

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress".

42 U.S.C. § 1985 provides in relevant part:

(b). Obstructing justice; intimidating party, witness, or juror

"If two or more persons in any State or Territory conspire to deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his person or property on account of his having so attended or testified, or to influence the verdict, presentment, or indictment of any grand or petit juror in any such court, or to injure such juror in his person or property on account of any verdict, presentment, or indictment lawfully assented to by him, or of his being or having been such juror; or if two or more persons conspire for the purpose of impeding hindering, obstructing, or defeating, in any manner, the due course of justice in any

State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws;

28 U.S.C. § 1343(a)(3) provides in relevant part:

"To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;"

28 U.S.C. § 1653 provides in relevant part:

Amendment of pleadings to show jurisdiction

Defective allegations of jurisdiction may be amended, upon terms, in the trial or appellate courts.

28 U.S.C. § 1654 provides in relevant part:

Appearance personally or by counsel

In all courts of the United States, the parties may plead and conduct their own cases personally or by counsel as, by the rules of such courts, respectively, are permitted to manage and conduct causes therein.

General Municipal Law § 50-e provides in relevant part:

Notice of Claim:

1. When service required; time for service; upon whom service required.

(a) In any case founded upon text where a notice of claim is required by law as a condition precedent to the commencement of an action or special proceeding against a public corporation, as defined in the general construction law, or any officer, appointee or employee thereof, the notice of claim shall comply with and be served in accordance with the provisions of this section within ninety days after the claim arises ... (emphasis added)

**UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT**

**FILED: MAY 7, 1990  
NO. 89-7819**

**Present:**

**Hon. James L. Oakes, Ch.J.  
Hon. Amalya L. Kearse, C.J.  
Hon. Betty B. Fletcher, C.J.\*  
Circuit Judges,**

---

**KENNETH B. QUANSAH, JR.,  
Plaintiff-Appellant,**

**vs.**

**CITY OF NEW YORK AND PEOPLE OF COUNTY OF  
NEW YORK, NEW YORK CITY POLICE DEPARTMENT,  
CITY OF NEW YORK AND COUNTY OF NEW YORK,  
Defendant-Appellees.**

---

**A petition for rehearing having been filed herein by Pro Se  
Appellant,**

**KENNETH B. QUANSAH, JR.,**

**Upon consideration by the panel that decided the appeal,  
it is**

**Ordered that said petition be and it hereby is DENIED.**

**Elaine B. Goldsmith, Clerk**

**\* Hon. Betty B. Fletcher, C.J., Ninth Circuit, sitting by designation**

**UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT**

**FILED: MAR. 6, 1990  
NO. 89-7819**

**Present:**

**Hon. James L. Oakes, Chief Judge.  
Hon. Amalya L. Kearse, Circuit Judge.  
Hon. Betty B. Fletcher, Circuit Judge.<sup>1</sup>**

**KENNETH B. QUANSAH, JR.  
Appellant,**

**vs.**

**CITY OF NEW YORK AND PEOPLE OF COUNTY  
OF NEW YORK: POLICE DEPARTMENT,  
CITY OF NEW YORK AND COUNTY OR  
NEW YORK,  
Appellees.**

**ORDER**

Kenneth B. Quansah, Jr., pro se, appeals a July 6, 1989, order of the United States District Court for the Southern District of New York, John E. Sprizzo, Judge, dismissing his complaint without prejudice to refile on or before July 31, 1989. We affirm.

In his complaint, Quansah alleges three separate causes of action arising out of his attempt in 1987 to obtain settlement of his previous lawsuit against the City of New York which had been dismissed with prejudice in 1981. He claims, first, that the Corporation Counsel of the City of New York and the New York City Police Department, in violation of 42 U.S.C. §§ 1981 and 1985 (1982), conspired to deny him a fair settlement by arresting him under false pretenses while he was waiting in the reception area of the Office of the Corporation Counsel. He moreover claims that the arresting

---

<sup>1</sup>Of the United States Court of Appeals for the Ninth Circuit, sitting by designation.

officers used excessive force and placed him in custody for three days, in violation of his due process rights, and that the Police Department committed libel and slander against him and acted negligently by recording the arrest charge into his permanent record even though the charge had ultimately been dismissed.

At a pre-trial conference with Quansah and an Assistant Corporation Counsel concerning Quansah's allegations, the district court stated that it "was prepared to dismiss the complaint on the grounds that it is insufficient, without prejudice to [plaintiff's] filing a sufficient or a different complaint within sixty days." After Quansah indicated his unwillingness to submit an amended complaint, the district court dismissed the complaint without prejudice.

Although a district court's dismissal of a complaint with leave to amend is generally not an appealable final order under 28 U.S.C. § 1291 (1982), we have treated such orders as final where a "disclaimer of intent to amend effectively cures the nonfinal character of the judgment from which the appeal has been taken." Connecticut Nat'l Bank v. Fluor Corp., 808 F.2d 957, 960-61 (2d Cir. 1987). Because Quansah announced his intention not to file an amended complaint, and the time to file an amended complaint has expired, we find the district court's order appealable.

Nevertheless, we agree with the district court's holding that the allegations in Quansah's complaint are insufficient. We note initially that his section 1981 and section 1985 challenges to his arrest must fall due to his failure to allege that he is a member of a protected class or that his arrests were the result of racial or other class-based discrimination. See generally Gleason v. McBride, 869 F.2d 688, 694-95 (2d Cir. 1989) (discussing pleading requirements for section 1985 claim); Friedman v. Village of Skokie, 763 F.2d 236, 238 (7th Cir. 1985) (dismissing pro se plaintiff's section 1981 and section 1985 claims for false arrest and prosecution). Moreover, his section 1983 claim alleging due process violations fails to state the "more than mere conclusory allegations," Salahuddin v. Cuomo, 861 F.2d 40, 43 (2d Cir. 1988)



(citation omitted), needed to sustain a constitutional cause of action. Yet even if properly drafted Quansah's section 1983 claim would not likely survive a motion to dismiss since, as the district court noted, the City of New York "cannot be sued in the absence of facts showing some predicate for liability beyond respondent superior."

Although pro se pleadings are to be held to less stringent standards than formal pleadings drafted by lawyers, see Haines v. Kerner, 404 U.S. 519, 520 (1972), the district court in this case advised Quansah of the defects in his pleadings and afforded him the opportunity to obtain an attorney or to amend and resubmit the complaint. Allowing Quansah to proceed on his constitutional claims, as currently pleaded, would therefore be tantamount to allowing disruption of governmental functions by meritless lawsuits. See Angola v. Civiletti, 666 F.2d 1, 4 (2d Cir. 1981).

The district court moreover properly dismissed Quansah's state law claims alleging libel, slander and negligence by the Police Department. Even if the court were to retain jurisdiction over these claims once the federal claims are dismissed, an assumption called into question by the plaintiff's failure to prove diversity of citizenship, appellant's failure to plead compliance with the procedural requirements governing tort actions against the City and County of New York see N.Y. Gen. Mun. Law § 50-i (McKinney 1986), renders his complaint defective as to these state tort law claims as well. Cf. Ezagui v. Dow Chem. Corp., 598 F.2d 727, 737 (2d Cir. 1979) (dismissing plaintiff's tort claims for failure to serve notice of claim within ninety days after the cause of action arose, pursuant to N.Y. Gen. Mun. Law § 50-e).

Judgment affirmed.

James L. Oakes, Chief Judge.  
Amalya L. Kearse, Circuit Judge  
Betty B. Fletcher, Circuit Judge

N.B. This summary order will not be published in the Federal Reporter and should not be cited or otherwise relied upon in unrelated cases before this or any other court.